

REMARKS

Applicants submit this Reply to the Office Action¹ mailed December 8, 2009, (the "Office Action"). By this Reply, Applicants have amended claim 9 and canceled claim 28 without prejudice or disclaimer. Accordingly, claims 9, 10, and 13-27, of which claim 9 is independent, are pending in this application. The originally-filed specification, drawings, and claims fully support the subject matter of the amendments to claim 9. Thus, this Reply introduces no new matter.

I. Rejections Under 35 U.S.C. § 112, first paragraph

In the Office Action, claims 9, 10, and 13-28 were rejected under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. Regarding claim 9, the Office Action alleges that "while there is support in the specification for adding 2% water in a second wetting process . . . for superficially wetting the wheat grain in a second wetting process, there is no support for wetting **a surface region** of the grains in a second wetting process." Office Action, p. 2-3, emphasis in original. In response, Applicants have amended independent claim 9 such that the claim now recites "superficially wetting the grains." As indicated by the Office Action, such language is supported by the originally filed specification. Accordingly Applicants submit that the rejection to claim 9, as well as dependent claims 10, 13, and

¹ The Office Action may contain a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

14-27 has been rendered moot. Further, by this amendment Applicants have canceled claim 28 thus rendering the 35 U.S.C. § 112, first paragraph rejection of claim 28 moot.

II. Rejections Under 35 U.S.C. § 103 (a)

In the Office Action, claims 9-10, 13, 14, 17, 18, and 21-27² were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable under U.S. Patent No. 5,650,018 to Müller ("Müller") in view of U.S. Patent No. 5,025,993 to Satake ("Satake"); claims 15, 16, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable under Müller in view of Satake, and further in view of U.S. Patent No. 4,314,925 to Paquette ("Paquette"); and claim 28 was rejected as being allegedly unpatentable under Müller in view of U.S. Patent No. 3,251,558 to Palyi ("Palyi"). By this amendment, Applicants have canceled claim 28 thus rendering the 35 U.S.C. § 103(a) rejection of claim 28 moot.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See *id.* "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore,

² Applicants note that while the Office Action states that only claims 9 and 10 are rejected under the alleged combination of Müller in view of Satake, the Office Action also purports to demonstrate that this combination satisfies each and every feature of claims 13, 14, 17, 18, and 21-27. Accordingly, for the sake of this Reply, Applicants assume that each of claims 13, 14, 17, 18, and 21-27 have been rejected under the alleged combination of Müller in view of Satake. Applicants respectfully request clarification in the next Office Action regarding the disposition of these claims.

"[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

"[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

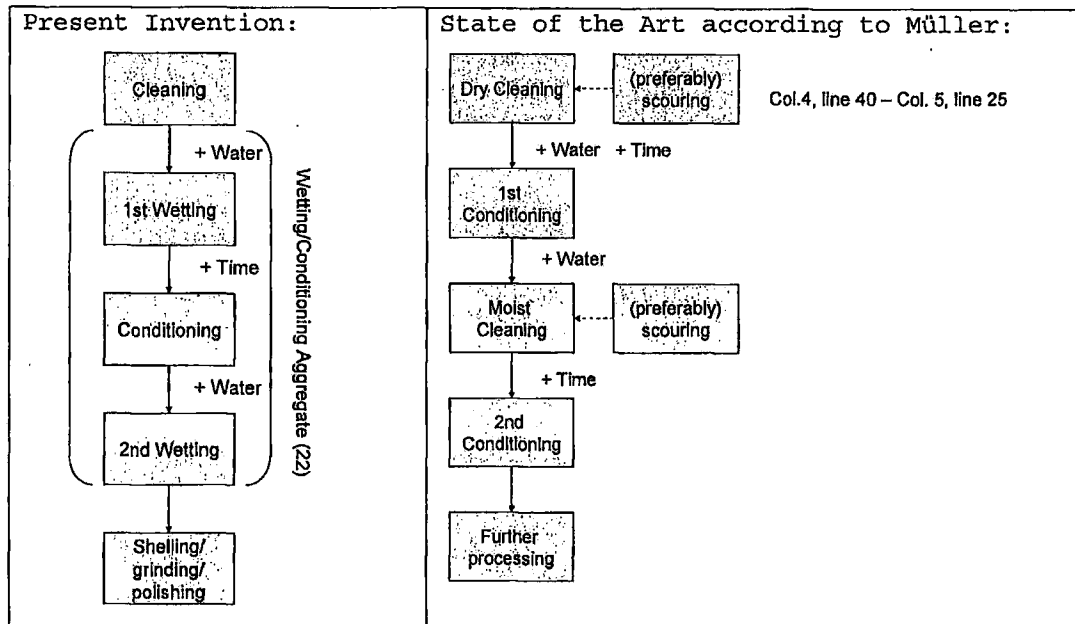
Müller discloses an apparatus for milling cereal. In Müller, as shown in figure 1, grain passes from an initial pre-cleaning stage 8, through wetting device 22, to a storage device 62, and then a secondary wetting process at 73. Following the grains exit from element 73, the grains are stored temporarily, weighed, and ultimately ground. See Müller, col. 8, lines 29-35.

Claim 9, as presently amended, recites, among other features, "directly shelling the grains after the second wetting process in a shelling machine; grinding said shelled grains in a grinding machine; and polishing the shelled grains in a polishing machine

after grinding.” In contrast to the features of independent claim 9, Müller does not disclose a shelling of the grains directly after the second wetting process. On the contrary, any purported shelling in Müller occurs in advance of the second wetting process. As described, shelling of the grains in Müller occurs in element 16 where “an intensive surface cleaning of each individual grain takes place. The dry abraded material from scouring is taken away via a collection hopper 18” As disclosed and clearly depicted by figure 1 of Müller, element 16 is disposed far upstream of element 73, the alleged second wetting process.

Even though the disclosure of Müller describes dry abrading the grains upstream of performing a second wetting process, the Office Action relies on Fig. 7 of Müller to assert that Müller discloses that the “grain [are] subjected to a second wetting process at 22” and subsequently scoured at 42.” Office Action, p. 8-9. Indeed, the Office Action attempts to assert that shelling and scouring grain are the one in the same with each other. (“[T]he grain is scoured, i.e. shelled.” Office Action, p. 9). Applicants respectfully disagree. Scouring differs considerably from shelling. Shelling results in the removal of an external shell of a grain. In contrast, scouring results in the polishing and/or cleaning of a grain. Indeed, Müller discloses scouring the outermost grain skin material which results in “0.3 - 2% being scoured away from the grain.” See Müller, col. 4, line 66- col. 5, line 1. By contrast, the present disclosure refers to “shelling.” Shelling results in displacement of the shell, i.e. a displacement of approximately 4% of the weight of the grain. See Specification, paragraph [0016].

As a further aid in depicting the differences between the subject matter of the present application and the disclosure of Müller, Applicants present the below schematic.



As detailed in the Specification, the instant application successfully simplifies the process of cleaning grain. It is further to be noted, that this effect can be achieved without having to resort to the combined scouring/cleansing steps of Müller.

Further, Applicants submit that Müller fails to disclose, teach, or otherwise suggest the features of independent claim 9. In contrast, Müller actually provides a disincentive to a person of ordinary skill in the art from merging and simplifying the process steps. Indeed, Müller states that "the presumed optimisation attempts of more recent times, with much overlapping or mixing of the basic operations, have afforded advantages only for particular partial aims. Taken together, on the other hand, their effect has been rather a retrograde one for the practical world of milling. Therefore.

milling practice declined the aforesaid proposals.” See Müller, col. 3, ll. 55-61.

Accordingly, Müller fails to disclose, teach, or otherwise suggest the features of amended independent claim 9 including “directly shelling the grains after the second wetting process in a shelling machine; grinding said shelled grains in a grinding machine; and polishing the shelled grains in a polishing machine after grinding.”

Further, even if Satake and/or Paquette disclose what the Office Action alleges, which Applicants do not concede, neither Satake or Paquette cure the deficiencies of Müller with respect to independent claim 9.

Müller, Satake, and Paquette, taken individually or in combination, do not teach or suggest each and every feature of amended claim 9. Accordingly, a *prima facie* case of obviousness has not been established and Applicants respectfully request that the Examiner withdraw the rejection of claim 9 under 35 U.S.C. § 103(a). Further, claims 10, and 13-27 depend from allowable independent claim 9, and are allowable at least due to their dependence as well as their additionally recited features. Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 10 and 13-27 under 35 U.S.C. § 103(a) over Müller, Satake, and/or Paquette.

III. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims 9, 10, and 13-27.

Please grant any extensions of time required to enter this response and charge
any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 8, 2010

By: 
Jessica F. Winchester
Reg. No. 65,285
(202) 408-4000